IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 943 of 2005

WITH

CIVIL APPLICATION NO.1107 of 2005

M/s.Neel Advertising & Marketing
Pvt.Ltd. .. Appellant

versus

Union of India .. Respondents

...

Mr.P.K. Dhakephalkar with Smt.Deepa Bajaj for the appellant.

Mr.Suresh Kumar for the respondent.

CORAM : B.H. MARLAPALLE,J

DATED : 20th October 2005

P.C.:

1. Heard Mr.Dhakephalkar, the learned counsel for the appellant plaintiff.

2. This appeal arises from the order dated 1st October 2005 passed by the learned Judge of the City Civil court, Mumbai dismissing the Notice of Motion

No. 3583 of 2005 filed in Suit no.4007 of 2005. The plaintiff was awarded contract for putting up glowsign hoardings on the Railway platforms. This was popularly known as "Bulk Advertising Rights". In the month of February 2005, the railways invited fresh tenders and called upon the plaintiff to remove its advertisements in glowsigns on the railway platforms, on expiry of the contract period, i.e. the end of September 2005. The plaintiff approached the trial Court and claimed for a declaration that it was entitled to continue with the contract till the end of April 2006. In the Notice of Motion,, the same relief was prayed for i.e. that the plaintiffs be allowed to display glowsign hoardings of 6’ x 4’ near buffers of platform nos.1, 2, 3 and 4 of Churchgate railway station. The learned Judge of the trial Court noted that the defendant railways had received contract considerations or rental charges till the end of April 2006 but the contract between the parties was self determinating so far as the tenure of the contract was concerned. On the fact of these express terms of contract, there was no prima facie case made out by the plaintiff, as per the trial court and therefore, the Notice of Motion came to be dismissed.

3. Shri Dhakephalkar, the learned counsel for the plaintiff re-iterated the same arguments in support of this appeal as well. As per him, when the rental amount was received for the period ending on 30th April 2006, equity demanded that the plaintiff was allowed to continue till April 2006 and the action of the railways in calling upon the plaintiff to remove the glowsign advertisements or offering the same to other parties was arbitrary, unfair and illegal.

4. Both the parties have placed on record compilation of documents. It is not disputed that by letter dated 10th January 2002, the Divisional Railway Manager, Mumbai Central issued an order accepting the offer of the plaintiff for displaying of six glowsign hoardings/displays on platform nos.1 to 4 of Churchgate Railway station for a period of three years. By a subsequent letter dated 8th March 2003, the size of the glowsign displays was changed from 4' x 4' to 6' x 6' on payment of additional consideration and the period of contract was made for one year from 23rd February 2003. The contracts were extended from time to time and the last such extension was by communication dated 16th August 2005. The said communication stated that the

contract was extended with 15% excallation upto 29th September 2005 or till the finalisation of tender whichever is earlier. It was also stated that the balance amount of the plaintiff if standing with the railways would be refunded or adjusted.. It is thus clear that the contract between the parties was for a specific period and merely remittance of charges upto April 2006 would not stand the contract period extended on its own moreso when the fresh tenders were invited in February 2005, the plaintiff did not appear to have responded to the same and the tenders have been finalised in as much as by the communication dated 29th August 2005, M/s.Bina Advetising has been offered the tender for Bulk Advertising Rights of Churchgate station for a period of three years and for a consideration of Rs. 1,80,09,000/- p.a. with annual escalation of 15% for the 2ndand 3rd year. In the circumstances, the view taken by the trial Court in dismissing the Notice of Motion cannot be faulted with and therefore, challenge to the said order raised in this appeal is devoid of merits.

5. The appeal is dismissed in limine. Civil Application does not survive.

B.H. MARLAPALLE, J